

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

CARPENTERS' DISTRICT COUNCIL OF)	
GREATER ST. LOUIS, LOCAL 795,)	
)	
Petitioner,)	
)	
v.)	
)	
ST. LOUIS COUNTY,)	
PUBLIC WORKS DEPARTMENT,)	
)	Public Case No. R 98-027
Respondent,)	
)	
and)	
)	
INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 1,)	
and)	
JOURNEYMEN & APPRENTICE)	
PLUMBERS OF THE UNITED)	
ASSOCIATION OF U.S.A. AND CANADA,)	
LOCAL 35,)	
)	
Intervenors.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of the Carpenters' District Council of Greater St. Louis, Local 795 (hereinafter referred to as the Carpenters), to represent certain employees of the St. Louis County Public Works Department, (hereinafter referred to as the County). The Carpenters seek to represent a bargaining unit consisting of all plumbing, electrical, residential, mechanical, property maintenance and zoning, site grading, commercial and structural inspectors, excluding supervisors, managers, and confidential employees. On March 2, 1998, the International Brotherhood of Electrical Workers, Local 1 (hereinafter referred to as the IBEW), filed a petition to represent all electrical inspectors and the

electrical inspector supervisor employed by the St. Louis County Department of Public Works, excluding office-clerical employees, professional employees, guards and supervisors, and all other employees. On March 6, 1998, the Journeymen & Apprentice Plumbers of the United Association of U.S.A. and Canada, Local 35 (hereinafter referred to as the Plumbers), filed a petition to represent all plumbing inspectors employed by the St. Louis County Department of Public Works, excluding office-clerical employees, professional employees, guards and supervisors, and all other employees. The IBEW and the Plumbers were granted intervenor status in this case.

A hearing on the matter was held on August 5, 1998, in Clayton, Missouri, at which representatives of the Carpenters, the IBEW, the Plumbers, and the County were present. Due to the length of the hearing, it was necessary to continue the hearing to August 27, 1998. The case was heard by State Board of Mediation Chairman John Birch, Employee Member Patrick Hickey, and Employer Member Lois VanderWaerdt. At the hearing, the parties were given full opportunity to present evidence and make their arguments. Afterward, the parties filed briefs. On October 13, 1998, the Carpenters moved to disqualify Employee Member Patrick Hickey from participating in the decision of this case due to the possibility of a conflict of interest caused by the merger of Pipefitter's Local 562 and Plumber's Local 35. The IBEW opposed the disqualification of Mr. Hickey. However, Mr. Hickey voluntarily withdrew from participating in the decision. Thereafter, the case transcript and briefs were supplied to Employee Member LeRoy Kraemer who participated in the Board's decision. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, Order and Direction of Election.

FINDINGS OF FACT

The County is a first class county in Missouri with a charter form of government. The County has the following departments: Administration, Community Health and Medical Care, Highways and Traffic, Human Resources, Parks and Recreation, Planning, Police, Public Works, Revenue, Justice Services, and Judicial Administration. Each County Department is under the management of a Director.

The County has established a merit system of personnel administration for the appointment and retention of County employees and appointed County officers. The County has approximately 4000 employees of which an estimated 3000 are merit employees. The County has a Public Service Commission. The Public Service Commission and Personnel Department set all personnel policies for merit employees.

All of the Inspectors in the Public Works Department are merit employees, and, as such, are subject to the same personnel policies, work rules, and disciplinary policies covering other County merit employees. They also have the same grievance procedure. All merit employees have the same paid vacation, paid holidays, sick leave, and fringe benefits such as disability insurance, life insurance and retirement. Additionally, all merit employees are under the same merit pay plan, salary increases are determined in the same manner, and only one payroll system is used. The standard work week for all merit employees is 40 hours per week. However, the Inspectors may have to work overtime to complete their daily inspections.

The Director of the Department of Public Works is charged with enforcing all laws, ordinances, and codes regulating building construction. Michael Dooley is the Acting Director of the Department of Public Works. Mike Werner is the Deputy Director of Code Enforcement. Code enforcement is organized into seven different areas: Property Maintenance and Zoning, Electrical, Plumbing, Residential, Structural Building,

Mechanical, and Grading. Inspectors are assigned to each area. The County refers to these different areas as disciplines. Within the disciplines, the Inspectors are classified as Inspector I, Inspector II, or Inspector III.¹

The Property Maintenance and Zoning Inspection Supervisor reports directly to the Deputy Director. Reporting to the Property Maintenance and Zoning Inspection Supervisor is one Property Maintenance and Zoning Inspector III, four Property Maintenance and Zoning Inspector II's, and eleven Property Maintenance and Zoning Inspector I's. At the time of hearing, one of the Property Maintenance and Zoning Inspector I positions was vacant.

Jack Sanders, the Inspections Manager, also reports directly to the Deputy Director. The Electrical Inspection Supervisor, Plumbing Inspection Supervisor, Residential Inspection Supervisor, Structural Building Inspection Supervisor, Mechanical Inspection Supervisor, and Grading Inspection Supervisor all report to Mr. Sanders.

Reporting to the Electrical Inspection Supervisor is one Electrical Inspector III, four Electrical Inspector II's, and eight Electrical Inspector I's. At the time of hearing, one of the Electrical Inspector I positions was vacant.

Reporting to the Plumbing Inspection Supervisor is one Plumbing Inspector III, four Plumbing Inspector II's, and eight Plumbing Inspector I's. At the time of hearing, one of the Plumbing Inspector II positions was vacant.

Reporting to the Residential Inspection Supervisor is one Residential Inspector III, five Residential Inspector II's, and nine Residential Inspector I's. At the time of hearing, four of the Residential Inspector I positions were vacant.

Reporting to the Structural Building Inspection Supervisor is one Structural Building Inspector III, five Structural Building Inspector II's, and five Structural Building

¹ The Grading area is an exception because there is no Grading Inspector III position.

Inspector I's. At the time of hearing, one of the Structural Building Inspector I positions was vacant.

Reporting to the Mechanical Inspection Supervisor, is one Mechanical Inspector III, five Mechanical Inspector II's, and six Mechanical Inspector I's. At the time of hearing, one of the Mechanical Inspector I positions was vacant.

Reporting to the Grading Inspection Supervisor, is one Grading Inspector II, and five Grading Inspector I's.

The Department has a central office in Clayton, Missouri, and three satellite offices. The Inspection Supervisors and all Inspector III's are located in the central office.

Inspector III's do not supervise the Inspectors in the field while they are performing on-site inspections. The Inspector III's primarily answer telephone inquiries from contractors and the general public and resolve compliance issues which arise from inspections performed by the Inspector II's and Inspector I's. The Inspector III's also routinely answer inquiries from Inspectors in other sections. They also review plans. However, the Inspector III's do perform some on-site inspections. Generally, this would occur if a problem arose on the job or an inspector was not able to complete his or her inspections. An on-site inspection by an Inspector III might also be performed on Saturday if no other Inspector were available.

The Inspector III's make sure that all Inspectors have their work assignments for the day and review the previous day's work to ensure that it has been completed correctly. When a minor problem with an Inspector arises, an Inspector III may speak to the Inspector, but a more serious disciplinary matter must be referred up the chain of command. Additionally, Inspector III's do not perform employee evaluations or make

recommendations concerning hiring. However, if the Inspection Supervisor is absent, the Inspector III can sign employee leave slips.

Each of the Inspector II's and I's is assigned to a satellite office. Each satellite office has inspectors from each of the seven disciplines. The Inspection Supervisors can transfer inspectors from one satellite office to another satellite office as needed.

The regular work hours for all Inspectors, regardless of discipline, is from 7:00 a.m. to 3:30 p.m. The Inspector II's and Inspector I's report each morning to the satellite office to which they are assigned. The Inspectors are in the office for one and one half to two hours each morning. During this time, they complete reports, such as the Daily Report of Inspections², and other paperwork. In addition to completing their own paperwork, the Inspector II's verify the Inspector I's paperwork. Each Inspector has a telephone at the office.³ Each Inspector also has business cards and his or her telephone number appears on the business cards.

The Inspectors are within close proximity of each other at the satellite offices. For example, in the north county satellite office, the Inspectors are located in a room approximately 20 feet by 40 feet. Approximately thirty desks are in the room. Inspectors from all of the different disciplines sit in the desks. Additionally, there is a common bathroom and lunchroom. The Inspectors see each other and speak to each other.

The Inspector II's spend most of their time performing on-site inspections. However, they also provide assistance to the Inspector I's on complex or difficult inspections. Inspector I's also spend the majority of their time performing on-site inspections. Both Inspector II's and Inspector I's perform on-site inspections without supervision.

² This form is used by all inspectors regardless of discipline.

To request an inspection, a contractor will call a particular telephone number and the computer will record the inspection request. Each morning, the Inspector II's will retrieve the inspection requests from the computer. Each Inspector II will retain some of the inspection requests and divide the remaining inspection requests among the Inspector I's within his or her work group. All Inspectors use their own vehicles when performing on-site inspections. The inspection requests are completed in the order requested by the contractors. For example, if the contractor requests that a particular inspection be performed in the morning, the Inspectors will perform the inspection in the morning. The inspections requested for each day are completed during that day. If an Inspector can not complete his or her assigned inspections, the Inspector requests overtime to complete the inspections. The Inspector will either be granted overtime or will be directed to give some of the inspections to another available Inspector. Overtime requests are routinely granted.

Inspector I's, regardless of discipline, are on the same pay range. Likewise, all Inspector II's are on the same pay range and all Inspector III's are on the same pay range. The entry level for all Inspectors is pay range 28. However, Inspectors can be hired in at any step within pay range 28, depending on experience. There are 17 steps within each pay range and each step is a set dollar amount equal to approximately two and one half percent. The pay ranges overlap. One group of employees handles the payroll for all Inspectors.

The County has adopted by ordinance the 1996 National Electrical Code. The Electrical Inspectors enforce the electrical code. Primarily the Electrical Inspectors inspect electrical installations at commercial and industrial sites in the unincorporated areas of the County and in municipalities which contract with the County for that service.

³ In the South County satellite office, three electrical inspectors shared two telephones, but this situation was going to be remedied.

These inspections may vary in complexity from a temporary power pole at a construction site to complex industrial applications. In addition, the Electrical Inspectors, not the residential inspectors, will perform inspections on residences in municipalities which have their own building inspector, but have contracted with the County for other inspection services.

By ordinance, the County has also adopted the National Standard Plumbing Code. The Plumbing Inspectors enforce this code. The Plumbing Inspectors inspect commercial and industrial plumbing installations, water and sewer installation in residences, and any installation in a residence that requires backflow protection. The plumbing inspectors perform these inspections in the unincorporated areas of the County and in municipalities within the County which contract for that service.

Mechanical Inspectors inspect primarily heating and air conditioning (HVAC) installations. However, they also inspect other items such as elevators, escalators, and process piping. Mechanical Inspectors enforce the mechanical code. They perform these inspections in the unincorporated areas of the County and in municipalities within the County which contract for that service.

Residential Inspectors perform inspections on single family residences and duplexes in unincorporated areas of the County and in municipalities within the County that contract for that service. They also inspect anything related to the residence such as swimming pools and detached buildings. These inspections are performed on both new constructions and additions. Residential Inspectors enforce the plumbing code, electrical code, building codes, and mechanical codes. Residential Inspectors require a combination of knowledge from all of the different disciplines. They perform these inspections in the unincorporated areas of the County and in municipalities located within the County which contract for this service. However, Residential Inspectors will

not inspect residences in municipalities which have inspectors to perform inspections in one or more of the disciplines.

The Inspectors inspect the work of others, they do not perform the work. In fact, the Inspectors are forbidden by County policy from performing the work. An Inspector does not have to necessarily be able to perform a journeyman's work to inspect it for compliance with the code. Therefore, one need not be a licensed journeyman to be hired as an Inspector. Furthermore, although the County, in some cases, may prefer that an applicant have a license, a license is not required. Also, one need not have had formal apprenticeship training to be hired as an inspector. An applicant may gain the required training and experience through other means, including on-the-job training. Lastly, to be hired as an Inspector, one need not be a member of a union.

To qualify for a Residential Inspector I position, one must have graduated from high school and have five years experience in the building construction trades, or any equivalent combination of training and experience. For a Residential Inspector II position, one must have graduated from high school and have seven years experience in the building construction trades, or any equivalent combination of training and experience. To be qualified for a Residential Inspector III position one must have graduated from high school and have seven years experience in building construction, field inspection, or other related work, or any equivalent combination of training and experience.

To be qualified for a Plumbing Inspector I position, one must have graduated from high school and have five years experience in the plumbing and drainlaying trade, or any equivalent combination of training and experience. For a Plumbing Inspector II, position one must have graduated from high school and have seven years experience in the plumbing and drainlaying trade, including two years experience as a plumbing

inspector; or any equivalent combination of training and experience. To qualify for a Plumbing Inspector III position, one must have graduated from high school and have seven years experience in the plumbing and drainlaying trade or other related work; or any equivalent combination of training and experience.

To qualify for a Electrical Inspector I position, one must have graduated from high school and have five years experience in the electrical trade, or any equivalent combination of training and experience. For a Electrical Inspector II position, one must have graduated from high school and have seven years experience in the electrical trade, or any equivalent combination of training and experience. As for the Electrical Inspector III position, one must have graduated from high school and have seven years experience in building construction, field inspection or other related work; or any equivalent combination of training and experience. The Electrical Inspection Supervisor must have graduated from high school and have nine years experience in the construction field involving electrical inspection responsibility, including two years of supervisory experience; or must have graduated from an accredited college or university with a Bachelor's degree in Architecture or Electrical Engineering and have five years of professional construction related experience involving electrical inspection responsibility, including two years in a supervisory capacity; or any equivalent combination of training and experience involving the enforcement of the National Electrical Code.

To be qualified for a Mechanical Inspector I position, one must have graduated from high school and have five years experience in the mechanical construction trade; or any equivalent combination of training and experience. For a Mechanical Inspector II position, one must have graduated from high school and have six years experience in the mechanical construction trade, including inspection responsibility; or any equivalent combination of training and experience. To qualify for a Mechanical Inspector III

position, one must have graduated from high school and have eight years experience in the mechanical construction trade including inspection responsibility; or any equivalent combination of training and experience.

To qualify for a Structural Building Inspector I position, one must have graduated from high school and have five years experience in the structural construction trade; or any equivalent combination of training and experience. To be qualified for a Structural Building Inspector II position, one must have graduated from high school and have six years experience in the structural construction trade, including inspection experience; or any equivalent combination of training and experience. For a Structural Building Inspector III position, one must have graduated from high school and have eight years experience in the structural construction trade, including inspection responsibility; or any equivalent combination of training and experience.

To qualify for a Grading Inspector I position, one must have graduated from high school and have five years experience in residential and commercial construction, maintenance, field inspection, or other related work; or any equivalent combination of training and experience. For a Grading Inspector II position, one must have graduated from high school and have six years experience in residential and commercial construction, maintenance, field inspection, or other related work including one year experience in construction site preparation inspection; or any equivalent combination of training and experience.

To be qualified for a Property Maintenance and Zoning Inspector I position, one must have graduated from high school and have five years experience in building construction, maintenance, field inspection, or other related work; or any equivalent combination of training and experience. To qualify for a Property Maintenance and Zoning Inspector II position, one must have graduated from high school and have six

years experience in building construction, maintenance, field inspection, or other related work; or any equivalent combination of training and experience. For a Property Maintenance and Zoning Inspector III position, one must have graduated from high school and have eight years experience in building construction, maintenance, field inspection, or other related work; or any equivalent combination of training and experience.

Inspectors may move from one discipline to another. As in the case of Robert L. Gettemeier, Jr., Mr. Gettemeier was a carpenter and a member of the carpenter's union. He went to work for the County as a Residential Inspector. He held that position for approximately eight years at which time he transferred to the Office of Electrical Inspection as an Electrical Inspector. Prior to his transfer to Electrical Inspector, Mr. Gettemeier had no formal training with the IBEW or any other electrical union. Additionally, he had no experience as an apprentice or journeyman electrician. The extent of his electrical experience was as a Residential Inspector for the County. However, after his transfer to Electrical Inspector, Mr. Gettemeier received training on the job by performing inspections with other experienced Electrical Inspectors. After two years as an Electrical Inspector, Mr. Gettemeier became a Mechanical Inspector. Prior to this transfer, Mr. Gettemeier had no experience as a Mechanical Inspector. Furthermore, other Inspectors besides Mr. Gettemeier, have transferred between disciplines. For example, Larry Pitcher, prior to becoming a Plumbing Inspector, inspected single family dwellings.

Although the Inspectors from the different disciplines do not coordinate their inspections, many of these inspections overlap. For example, a Electrical Inspector will inspect the electrical power to an elevator and a Mechanical Inspector will inspect other portions of the elevator. Likewise, a Residential Inspector will inspect plumbing in a

residence, but a Plumbing Inspector will inspect the water and sewer installation in the residence. A Plumbing Inspector would also inspect any installation in a residence that requires backflow protection. Plumbing Inspectors will also inspect backflow devices on process piping systems and Mechanical Inspectors will inspect the pipes. In addition, Mechanical Inspectors and Structural Inspectors work together closely and, at times, their inspections overlap. At least in one case, a Residential Inspector performed an electrical inspection when the Electrical Inspectors were busy.

The Inspectors also work with the other County Departments. For example, when the County Highway Department destroyed taps on Telegraph Road, a Plumbing Inspector had to inspect the work before the Highway Department could backfill over them. The Plumbing Inspectors had to coordinate the inspections with the Highway Department.

There also appears to be some interaction between the Inspectors in the different disciplines. The Inspectors do occasionally meet each other on construction sites. They talk and ask questions of each other. The Inspectors of different disciplines may also work hand-in-hand with each other on a construction site. Inspectors from different disciplines ask plumbing questions of the Plumbing Inspector III.

There is no history of collective bargaining within the Department of Public Works. While some of the Inspectors are union members, a number of these union memberships are of very recent origin. In fact, some of the Inspectors joined the union after the petitions were filed in this case.

Finally, Rick Hill, the Electrical Inspection Supervisor, plans, organizes, and supervises the work of the electrical inspectors. He also directs and supervises staff personnel. As Electrical Inspection Supervisor, Mr. Hill establishes performance standards, sets achievement goals, develops and implements in-house training, and

performs staff evaluations. He also recommends individuals to be hired by the department. However, the department director, as the appointing authority, is the only individual who may hire or fire Inspectors. Generally, Mr. Hill's recommendations concerning hiring are followed by the Department Director. Mr. Hill also handles routine disciplinary problems. Severe or extraordinary disciplinary actions must be referred to his superiors. Mr. Hill also holds staff meetings as required.

Mr. Hill receives and responds to complaints and inquiries from the general public and contractors. He also manages the complaint investigation backlog and unabated violation backlog. He approves correspondence related to notices of violation, stop work orders, and recommends corrective action. He recommends legal action, reviews documentation prepared for litigation and assists the County Counselor's Office in prosecution of court cases. Occasionally, he will conduct complex field inspections. He may also conduct a field inspection where a dispute has arisen between an electrical inspector and a contractor. Mr. Hill also communicates with other county departments and responds to County Council orders.

Mr. Hill serves as the Secretary of the Electrical Code Review Committee and the Board of Electrical Examiners. He implements the county's electrical contractor testing, licensing, and bonding program and maintains records concerning the program. He recommends and schedules hearings concerning electrical license violations and administers the homeowner electrical testing program. He also tests equipment. For example, when school children were being shocked on playground equipment, Mr. Hill conducted tests on the equipment. Mr. Hill also represents the county at public forums, code seminars, and training seminars.

CONCLUSIONS OF LAW

The Carpenters seek to represent a Department-wide bargaining unit consisting of all Inspector II's and all Inspector I's. The Carpenters contend that the Inspector III's are Supervisors and should be excluded from the Department-wide bargaining unit. The County supports the Carpenters position of a Department-wide unit of Inspectors. The County takes no position concerning the inclusion of the Inspector III's in such a unit. However, the County contends that the Electrical Inspection Supervisor position is a supervisory position or a managerial position and should therefore be excluded from a bargaining unit of Inspectors. The IBEW seeks to represent a bargaining unit consisting of the Electrical Inspection Supervisor, Electrical Inspector III, Electrical Inspector II's, and Electrical Inspector I's. The Plumbers seek to represent a bargaining unit consisting of the Plumbing Inspector III, the Plumbing Inspector II's, and the Plumbing Inspector I's. The IBEW and the Plumbers contend that the Electrical Inspectors and Plumbing Inspectors constitute separate craft units which require separate representation. The petitioning parties have the burden of proving the appropriateness of the bargaining unit. *Central County Emergency 911 v. International Association of Firefighters Local 2665*, 967 S.W.2d 696, 699 (Mo. App. W.D. 1998).

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994 which provides: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a “clear and identifiable community of interest” nor does it set out any criteria as to the means to be used by the Board in resolving such issues. However, the Board has consistently looked to a number of factors in determining whether employees have a community of interest. Those factors, as set forth in *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990) are:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours of work and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills, and training of employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.
11. Extent of union organization.

At the outset, it should be emphasized that, even if the Electrical Inspectors and Plumbing Inspectors are craft employees, nothing in the Public Sector Labor Law precludes craft employees from being included in a bargaining unit with non-craft employees. *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990). Accordingly then, craft employees can either be included in a unit with non-craft employees or given their own unit. *Id.*

Furthermore, the decision to sever a craft unit must be based upon the relevant

factors in each individual case. *Local Union No. 95, International Brotherhood of Electrical Workers v. City of Monett, Missouri*, Public Case No. 106 (SBM 1976). However, because of the Board's concern with over-fragmentation of a bargaining unit, the Board has consistently held that employees who possess skills and duties not shared by other employees will require separate representation only when it is necessary to protect their right to effective bargaining. *Sheet Metal Workers International Association Local No. 2 v. Central Missouri State University*, Public Case No. 83-001 (SBM 1983).

Another principle which is relevant in this case is that in making a determination concerning appropriate bargaining unit, there is no requirement that the unit be the most appropriate or the best unit. *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990). The only requirement is that the unit be appropriate. *Id.*

An analysis of the factors in this case demonstrates that all of the Inspectors within the Department, including Inspector III's, Inspector II's and Inspector I's, share a clear and identifiable community of interest and therefore, constitute an appropriate bargaining unit. Furthermore, the evidence does not show that the Electrical Inspectors and Plumbing Inspectors have such special and distinct interests as would outweigh and override the community of interest shared with the other Inspectors within the Department of Public Works. See, *National Labor Relations Board v. Harry T. Campbell Sons' Corporation*, 407 F.2d 969, 976 (4th Cir. 1969) (Quoting, *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962)).

All Inspectors are under the same merit pay plan and salary increases for all Inspectors are determined in the same manner. Inspector I's, regardless of discipline, are on the same pay range. Likewise, all Inspector II's are on the same pay range and

all Inspector III's are on the same pay range. The entry level for all Inspectors is pay range 28. There are 17 steps within each pay range and each step is a set dollar amount equal to approximately two and one half percent. There is only one payroll system and only one group of employees handles the payroll for all Inspectors.

All of the Inspectors in the Public Works Department are subject to the same personnel policies, work rules, and disciplinary policies. They also have the same grievance procedure. All Inspectors have the same paid vacation, paid holidays, sick leave, and fringe benefits such as disability insurance, life insurance and retirement. All Inspectors work the same hours and work the same standard work week of 40 hours per week. However, the Inspectors may have to work overtime to complete their daily inspections.

All of the Inspectors inspect the work of others. They do not perform the work. In fact, the Inspectors are forbidden by County policy from performing the work. Therefore, Electrical Inspectors do not perform electrical installations, they inspect electrical installations. Likewise, Plumbing Inspectors do not install plumbing, they inspect plumbing Installations.

To be an Inspector requires a high school diploma and a combination of experience and training in the particular discipline. One need not be a licensed journeyman to be hired as an Inspector. Furthermore, although the County, in some cases, may prefer that an applicant have a license, a license is not required. Also, one need not have had formal apprenticeship training to be hired as an Inspector. An applicant may gain the required training and experience through other means, including on-the-job training. Lastly, to be hired as an Inspector, one need not be a member of a union.

Furthermore, there appears to be frequent contact and interchange between all of the Department's Inspectors. The Inspector I's and Inspector II's see each other daily at the satellite offices. They speak to one another and ask questions of one another. Occasionally, the Inspectors of different disciplines meet on the construction sites and ask each other questions. In addition, Inspectors of different disciplines have worked hand-in-hand on the construction sites. Inspectors from the different disciplines will also contact the Inspector III's to ask them questions.

All of the Inspector II's and Inspector I's are all in close proximity of each other within their respective satellite offices. Within each satellite office the Inspector II's and Inspector I's share a common bathroom and common lunchroom. The Inspectors III's are all in close proximity of each other within the central office.

There is significant integration within the County's processes and within the duties assigned to the Inspectors. At times the Inspectors work closely with the other County Departments. For example, when the County Highway Department destroyed taps on Telegraph Road, a Plumbing Inspector had to inspect the work before the Highway Department could backfill over them. The Plumbing Inspectors and the Highway Department had to coordinate these activities.

Furthermore, while the Inspectors from the different disciplines do not coordinate their inspections, many of these inspections overlap. For example, a Electrical Inspector will inspect the electrical power to an elevator and a Mechanical Inspector will inspect other portions of the elevator. Likewise, a Residential Inspector will inspect plumbing in a residence, but a Plumbing Inspector will inspect the water and sewer installation in the residence. A Plumbing Inspector would also inspect any installation in a residence that requires backflow protection. Plumbing Inspectors will also inspect backflow devices on process piping systems and Mechanical Inspectors will inspect the pipes. In addition,

Mechanical Inspectors and Structural Inspectors work together closely and, at times, their inspections overlap.

The Inspectors may also transfer between disciplines. Furthermore, at least in one case, a Residential Inspector performed an electrical inspection when the Electrical Inspectors were busy.

All of the Inspectors do not have the same immediate supervisor. However, this fact does not preclude a finding that all of the Inspectors share a community of interest. *See, California Physicians' Service d/b/a California Blue Shield v. Professional, Office and Industrial Union, affiliated with Marine Engineers' Beneficial Association, (AFL-CIO)*, 178 NLRB 116 (1969). Furthermore, all of the Inspectors are ultimately answerable to the Director of the Department of Public Works. The Department Director is the appointing authority with power to hire, suspend, and discharge the Inspectors.

Additionally, with the centralization of code enforcement within the Director of the Department of Public Works, all Inspectors share a common relationship to the administrative organization of the County. Furthermore, the Director has authority to reorganize the Department and reassign functions among his staff. Therefore, all Inspectors are subject to being reassigned or having their job duties changed.

Finally, there is no history of collective bargaining within the Department of Public Works. While some of the Inspectors are union members, a number of these union memberships are of very recent origin. In fact, some of the Inspectors joined the union after the petitions were filed in this case.

Based upon the foregoing, all of the Inspectors share a clear and identifiable community of interest. Furthermore, the Electrical Inspectors and Plumbing Inspectors do not have such special and distinct interests that outweigh and override the community of interest shared by all of the Inspectors. The Electrical Inspectors' rights to

effective bargaining and the Plumbing Inspectors' rights to effective bargaining will be adequately protected by including them in the Department-wide unit. Therefore, it is not necessary to have separate bargaining units for the Electrical Inspectors and the Plumbing Inspectors.

Furthermore, a review of the evidence in this case reveals that the Inspector III's are not Supervisors. While supervisors are not specially excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See, *Golden Valley Memorial Hospital v. Missouri State Board of Mediation*, 559 S.W.2d 581 (Mo.App. 1977) and *St. Louis Fire Fighters Association, Local 73 v. City of St. Louis*, Case No. 76-013 (SBM 1976). The rationale for this exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise. This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise.

This Board has traditionally used the following indicia to determine supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
3. The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
5. Whether the person is primarily supervising an activity or primarily supervising employees; and
6. Whether the person is a working supervisor or whether he or she spends

a substantial majority of his or her time supervising employees.⁴

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.⁵

Inspector III's do not effectively recommend the hiring, promotion, transfer or discharge of the Inspector II's and the Inspector I's. They also do not evaluate the Inspector II's and the Inspector I's. While they may speak to inspectors concerning minor disciplinary problems, substantial disciplinary problems must be referred to higher authority. Furthermore, given the fact that the pay ranges in the County's merit pay plan overlap, an Inspector III may make less than Inspector II's and Inspector I's under them.

Inspector III's spend a substantial portion of their time answering inquiries from contractors and the general public. Inspector III's also spend a portion of their time performing field inspections. Inspector III's do not direct or assign Inspector II's and Inspector I's. They also do not supervise the Inspector II's and Inspector I's on the construction sites. However, the Inspector III's do ensure that each day's work assignments are completed. Overall, the Inspector III's do not exercise sufficient supervisory authority in such combination and degree to make them supervisors. We, therefore, conclude that in this specific case the Inspector III's are not supervisors.

Since the Board has declined to sever the Electrical Inspectors and Plumbing Inspectors as two separate craft units, the Board does not reach the issue of whether the Electrical Inspection Supervisor is a supervisory position or managerial position within the meaning of the Public Sector Labor Law.

⁴ See, for example, *City of Sikeston*, Case No. R 87-012 (SBM 1987).

⁵ See, for example, *Monroe County Nursing Home District, d/b/a Monroe Manor*, Case No. R 91-016 (SBM 1991).

Finally, 8 CSR 40-2.030 requires petitions for certification to be accompanied by a showing of interest of not less than thirty percent (30%) of the appropriate unit. The Carpenters have a sufficient showing of interest within the department-wide bargaining unit of inspectors created by the Board herein. Furthermore, 8 CSR 40-2.130 requires intervenors to have at least a ten percent (10%) showing of interest within the appropriate bargaining unit. The IBEW and the Plumbers both have the required ten percent showing of interest within the department-wide bargaining unit of inspectors created by the Board herein. Therefore, all three labor organizations may be included on the ballot in the representation election.

ORDER

The State Board of Mediation finds that the Inspector III's are not Supervisors. The Board further finds that a unit consisting of all Inspector I's, Inspector II's, and Inspector III's in St. Louis County's Department of Public Works is an appropriate unit. An election is ordered therein.

Since the Carpenters, IBEW, and Plumbers all have the requisite showing of interest to be included on the ballot in such representation election, all three labor organizations will be on the ballot unless within ten days of the date of this order any one or all of the organizations inform the Chairman in writing that they do not wish to participate in the representation election.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 60 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees

eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged since the designated payroll period and who have not been rehired or reinstated before the election.

Unless any one or more of the labor organizations chooses not to participate in the election, the Carpenters' District Council of Greater St. Louis, Local 795, the International Brotherhood of Electrical Workers, Local 1, and the Journeymen & Apprentice Plumbers of the United Association of U.S.A. and Canada, Local 35, will all appear on the ballot along with the choice of no union. Those eligible to vote shall vote whether or not they desire to have the Carpenters' District Council of Greater St. Louis, Local 795, or the International Brotherhood of Electrical Workers, Local 1, or the Journeymen & Apprentice Plumbers of the United Association of U.S.A. and Canada, Local 35, as their exclusive bargaining representative. They may also vote to have no bargaining representative. If no choice on the ballot receives a majority of the valid ballots cast, a run-off election will be held pursuant to 8 CSR 40-2.170.

The County shall submit to the Chairman of the State Board of Mediation, within fourteen working days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 22nd day of January, 1999.

STATE BOARD OF MEDIATION

/s/ John A. Birch
John A. Birch, Chairman

(SEAL)

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member

/s/ Lois Vander Waerd
Lois VanderWaerd, Employer Member